defendant was not actuated by spite or a desire to injure. Actual malice is not a necessary element of the liability. To do intentionally that which is calculated in the ordinary course of events to damage and which in fact does damage another person in his property or trade is malicious in law if done without justification or excuse, or in wanton disregard of the rights of others. And it is immaterial that defendant acted under a wrong understanding of his rights. *Bitterman* v. *Louisville, etc., R. Co.*, 207 U. S. 205, 12 Ann. Cas. 693; *Hitchman Co.* v. *Mitchell*, 245 U. S. 229, L. R. A. 1918C, 497. But see *Chambers* v. *Baldwin, supra.* Competition in business is not actionable, provided no unfair means are employed. *Lewis* v. *Huie-Hodge Lumber Co.*, 121 La. 658, 46 South. 685; *West Va. Transportation Co.* v. *Standard Oil Co.*, 50 W. Va. 611, 40 S. E. 591, 88 Am. St. Rep. 895, 56 L. R. A. 804. But the defendant cannot maintain that he was acting to advance his own interests under the right of competition as a justification or excuse for inducing the breach of existing contracts. Nothing short of an equal or superior right will suffice. *Walker* v. *Cronin*, 107 Mass. 555. But see *Glenco Sand Co.* v. *Hudson Bros. Commission Co.*, 138 Mo. 439, 40 S. W. 93, 60 Am. St. Rep. 560, 36 L. R. A. 804. Nor is the fact that the plaintiff has a right of action against the other party to the contract a defense. *Raymond* v. *Yarrington*, 96 Tex. 443, 73 S. W. 800, 97 Am. St. Rep. 914, 62 L. R. A. 962.

As to acts of interference by a third party whereby the plaintiff is prevented from making a contract, the criterion of liability is the existence or non-existence of a malicious motive. If the acts are prompted by a desire to advance his self-interest under the general right of competition in business, and no unlawful means are employed, no liability attaches to the defendant. *Roseneau* v. *Empire Circuit Co.*, 131 App. Div. 429, 115 N. Y. Supp. 511; *Robison* v. *Texas Pine Land Ass'n* (Tex. Civ. App.), 40 S. W. 843. But if unlawful means are employed the defendant will be held liable. See *Willner* v. *Silverman*, 109 Md. 341, 71 Atl. 962, 24 L. R. A. (N. S.) 895; *Van Horn* v. *Van Horn*, 52 N. J. L. 284, 20 Atl. 485, 10 L. R. A. 184. If the acts of the defendant were done without justification or excuse, and not for the advancement of self-interest, but with the intention of injuring the plaintiff in his business by preventing him from obtaining the benefits of future contracts, an action for damages will lie. *Dunshee* v. *Standard Oil Co.* (Iowa), 126 N. W. 342. But see *Boyson* v. *Thorn, supra.*

HOMICIDE—INSANITY—BURDEN OF PROOF.—In a trial for murder the defendant pleaded insanity. *Held*, the burden was on the defendant to prove by a fair preponderance of evidence that he was insane when he killed the deceased. *Commonwealth* v. *Dale* (Pa.), 107 Atl. 743. See NOTES, p. 209.

INSURANCE—INCONTESTABLE CLAUSE—FRAUD AS A DEFENSE TO THE INSURER.—A life insurance policy provided that it would be incontestable from date of issue. In an action on the policy, the insurer set up the defense of fraud on the part of the insured in his application for the